

California Bar Journal

Few who need legal help get it

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California lags far behind comparable states in funding legal services for the poor, a situation so dire that only 28 percent of the civil legal needs of the state's poor and lower-income residents are being addressed.

That figure translates into 2 million people without the ability to access the justice system, according to a new study by the California Commission on Access to Justice, which also found that despite increased spending, the gap between need and services remains substantial.

"As a practical matter, in most cases there can be no access to justice without access to legal assistance," said Jack Londen, past commission chair and a partner with Morrison & Foerster in San Francisco.

"Whether we like it or not, sometimes landlords illegally evict tenants, children with disabilities are denied proper care, veterans don't get services guaranteed to them, and elderly people need legal assistance to escape the abuse of a caregiver."

California has the highest number of people in poverty in the nation - 6.4 million, including nearly one in five children. Half the nation's increase in poverty in the 1990s, when the number of poor jumped 30 percent, occurred in California, and nearly 25 percent of the nation's poverty increase occurred in Los Angeles County alone.

Even those with jobs are suffering: 26 percent of California workers earn poverty level wages. The commission's report, "The Path to Equal Justice: A Five-Year Status Report on Access to Justice in California," examined how the legal needs of the state's poor have changed in the last five years as well as both the shortcomings of the justice system and the improvements during that period.

Despite increases in state funding to meet the legal needs of the poor, low interest rates (which have reduced the IOLTA fund), high unemployment and the present economic downturn have threatened any gains.

States like Minnesota and New Jersey spend three times more than California to meet the poor's legal needs, Connecticut and Massachusetts spend more than twice as much, and countries like England, Canada, Australia, Scotland and New Zealand spend anywhere from two to 14 times more proportionately than California, despite the fact that California has the world's sixth largest economy.

The report says the state would need to triple its combined public and private investment in legal services to adequately meet the legal needs of low-income Californians.

The 1996 welfare reform legislation, in particular, brought dramatic changes to the lives of those living in poverty, for while fewer people now receive welfare benefits, those who left welfare to work are still poor. And the legal issues they face "have become more numerous and complex," the report said.

"Parents who found only low-paying jobs without health benefits did not improve the well-being of their children. Women who entered the workforce in low-skilled positions with no opportunity to acquire marketable skills lack realistic long-term options. Obstacles to employment such as lack of child care and transportation, domestic violence and job discrimination raise a host of new legal issues."

Those issues revolve around an extensive universe of problems, including housing, education, domestic violence, immigration, employment, grandparent guardianships, bankruptcy and consumer debt, veterans' issues, elder abuse and home equity fraud, the report said.

To meet all those needs, there is only one legal aid lawyer for every 10,000 poor Californians. Despite this bleak picture, the state's civil justice community has taken significant steps to close the gap between need and services in the past five years:

The legislature and the governor established the Equal Access Fund, which has provided \$10 million annually since 1999 for more than 100 local legal services programs.

Access to the courts has been enhanced through a variety of self-help options, including online assistance in every county, a system of family law facilitators, increased funding for alternative dispute resolution and simplified forms and procedures.

The Judicial Council is addressing language barriers by increasing the availability of qualified interpreters and translating forms and instructions into Spanish, Vietnamese, Korean and Chinese.

Legal services programs have been strengthened by offering a wide range of services, including self-help clinics and hotlines and working relationships with social services agencies to meet all of a client's needs.

Still, when more than 70 percent of the poor's legal needs are not being met, much remains to be done, the report points out. It recommends adding to the access fund, increasing both the number of pro bono hours and financial contributions from attorneys, improved assistance for unrepresented litigants and access to an attorney for those who require one, and development of a statewide plan to distribute legal services more evenly throughout the state to insure that the rural population also is served.

"I know my fellow judges want to do justice and not inflict injustice," observed Justice Earl Johnson of the California Court of Appeal, who chaired the committee that researched and wrote the report.

"More than anyone, they know it can be nearly impossible to do the former and avoid the latter in a one-sided contest where only one litigant has a lawyer."

"Our whole society is harmed when access and fairness are denied," said Londen.

"Clearly, California can - and must - do better."